IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31-8-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

C.M.A.No.2027 of 2000

RM. Arunachalam ... Appellant/Petitioner

Vs.

1. V. Parthasarathy

2. New India Assurance Co. Ltd.,
III Party Claims, Moore Street,
Chennai-1. ... Respondents/Respondents

This Civil Miscellaneous Appeal u/s 173 of MV Act is preferred against the order dated 7.3.2000 made in M.C.O.P.No.2123 of 1998 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes), Chennai.

For Appellant : Mr.M.Sathyanarayanan
For 1st Respondent : No appearance
For 2nd Respondent : Mr.S.Jayasankar

J U D G M E N T

This Civil Miscellaneous Appeal is preferred by the Claimant in M.C.O.P.No.2123 of 1998 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes), Chennai, challenging the order of dismissal dated 7.3.2000.

2. The case of the appellant/claimant is that on 10.4.1996 at about 10.00 p.m. when he was returning to his house from office in his motor bike bearing registration No.TN-02-A-6282 in the third main road, Ambattur Estate, a lorry bearing registration No.TSA 4327 driven by its driver in a rash and negligent manner, came in a high speed and hit against him and he was thrown out from the motor bike. In the said accident, the appellant/ claimant sustained grievous injuries and fractures and he was hospitalised for ten days and was bed-ridden for about six months. For the injuries

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

and disability sustained, medical expenses incurred, etc., the appellant approached the Tribunal claiming Rs.1,98,500/- from the owner of the lorry/first respondent and the Insurance Company/second respondent with whom the lorry was insured.

3. The second respondent/Insurance Company filed counter affidavit contending that the Police records show that the injured person was one L.Arun, Son of Lakshmanan and the appellant/claimant was not the injured person and therefore the appellant/claimant has to prove that actually he is the injured person and is entitled to claim compensation.

4. The appellant/claimant was examined as PW-1. He produced Ex.P-2 Discharge summary to show that the name of the person admitted immediately after the accident in KHM Hospital, Annanagar, Chennai-40 is Arunachalam and the date of admission is 10.4.1996 and the date of discharge is 22.4.1996. In the said document it is stated that the patient was hit by lorry at 10.15 p.m. at Ambattur Estate near IMS Hospital. In Ex.P-2 with regard to the injuries it is stated as follows:

"WOUND INSPECTION & DEBRIDEMENT

Under GA the entire knee was opened out, patella fragmented cruciate torn with wound contamination. Thorough debridement and excision of the fragmented patella done and quadiceps mechanism was less consnicted & reparied.

Fracture both bone's leg (Right) aligned and calcanicern pin traction applied. Wounds approximated without tension.

IV Fluids
Inj. Orizolin IV
Inj. Metrogyl IV
Inj. Amikacin IV
Inj. Voveran IM
FRACTURE BB RIGHT LEG ORIF DONE
Inj. Supacef IV
Inj. Amikacin IV bd
T. Chymoral forte tds"

WEB COPY

The medical bills are marked as Ex.P-3 series, which also contain the name of the appellant/claimant. The claimant was on leave from 10.4.1996 to 14.10.1996 due to the accident as could be seen from Ex.P-4 Loss of Pay certificate issued by the Employer of the appellant/claimant. Ex.P-5 Disability certificate fixing the disability as 60% is also issued in the name of 'RM.Arunachalam, son of Ramanathan'.

https://hcservices.ecourts.gov.in/hcservices/

5. The Tribunal, without appreciating Ex.P-2 Discharge Summary, Ex.P-3 series Medical Bills, Ex.P-4 Loss of Pay Certificate, and Ex.P-5 Disability Certificate produced by the appellant/claimant, solely relied on the FIR and Charge sheet, where the name of the victim is shown as Arun and dismissed the claim petition as against which the present appeal is filed.

6. The learned counsel appearing for the appellant argued that the accident had taken place on 10.4.1996 at 10.00 p.m. in the third main Road, Ambattur Estate when the lorry bearing registration No.TSA 4327 hit against the appellant/claimant and the driver of the lorry was found guilty by the criminal Court and that the alleged Arun, whose name finds place as victim in the FIR having not claimed any compensation, the appellant/claimant is the real and only victim and therefore the Tribunal was not right in relying on the police version to deny compensation. The learned counsel further submitted that the accident having been admitted and the appellant having proved the injuries due to the said accident by producing Ex.P-2 to P-6, the Tribunal was not justified in disbelieving the same and ought not to have dismissed the claim petition.

7. The learned counsel appearing for the second respondent on the other hand contended that the criminal court records disclose the name of the injured person as Arun and not the name of the appellant/claimant and therefore the rejection of claim petition filed by the appellant/claimant is just and proper.

8. I have considered the rival submissions made by the learned counsel appearing for the appellant/claimant as well as the second respondent.

9. The accident that took place between the motor bike bearing registration No.TN-02-A-6282 and Lorry bearing registrtion No.TSA 4327 on 10.4.1996 in Ambattur Estate at 10.00 p.m. is not disputed. Merely because the FIR contain the name of one Arun as victim, the claim of the appellant cannot be denied in view of the fact that immediately after the accident, the appellant/claimant was admitted in KHM hospital, Annanagar, Chennai-40, at 10.15 p.m. and was treated as inpatient from 10.4.1996 to 22.4.1996, which is proved through Ex.P-2. Ex.P-3 series medical bills, Ex.P-5 Disability certificate issued by the Doctor of Government Stanley Hospital, Chennai, also contain the name of the appellant only. Merely because the name of the injured person was not correctly disclosed in the criminal case records, the claim of the appellant cannot be rejected, particularly when the accident is proved by way of admission of guilty by the driver of the lorry and no person other than the appellant/claimant filed any claim petition claiming compensation.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10. The informant to the police viz., Anandan was examined as PW-2. In his evidence PW-2 deposed that the appellant is known to him and he was the injured person in the accident that took place on 10.4.1996; in his house the appellant is called as 'Arun'; he also used to call him as 'Arun' and therefore he has given the name of the injured person as 'Arun' in the complaint. PW-2 also states that he only admitted the appellant in the hospital by hiring a van. The criminal Court or the Police have no chance to verify as to whether the said Arun is a different person as the driver of the lorry admitted his guilt and paid the fine amount. Had the criminal court gone into the merits of the case, one can take a view that the appellant's name differs from the name of the injured person in the FIR. The very same informant/PW-2 having stated that the appellant is the injured person, no different view is possible. The motor bike involved in the accident is also one and the same i.e, Yamaha motor bike bearing registration No.TN-02-A-6282. Hence I am of the view that the appellant/claimant is entitled to get compensation and the second respondent being the Insurance Company, is bound to pay the compensation.

11. Insofar as the quantum of compensation is concerned, the appellant/claimant was admitted as inpatient in KHM Hospital, Annanagar, Chennai from 10.4.1996 to 22.4.1996 and there is fracture in both the bones in the right leg. The appellant also produced Ex.P-4 Loss of pay certificate from the Employer for about six months disclosing his salary as Rs.3,287.50. The disability assessed was 60%. The appellant also produced Ex.P-3 series Medical bills. Hence I am of the view that the appellant can be awarded compensation under the following heads:

Medical Expenses	...	Rs. 5,000/-
60% Disability	...	Rs. 60,000/-
Loss of income during treatment for six months @ Rs.3,287.50 p.m.	...	Rs. 19,725/-
Pain and Suffering	...	Rs. 10,000/-
Transportation	...	Rs. 2,500/-
Extra Nourishment	...	Rs. 2,775/-
Total	...	Rs.1,00,000/-

12. Thus, the appellant/claimant is entitled to a total compensation of Rs.1,00,000/- with 7.5 % interest from the date of the claim petition. The second respondent is directed to deposit the said amount within a period of four weeks from the date of receipt of copy of this order and on such deposit, the appellant/claimant is permitted the withdraw the same.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The Civil Miscellaneous Appeal is allowed in part with the above directions. No costs.

vr

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The II Judge, Court of Small Causes, Chennai.
2. The Section Officer, VR Section, High Court, Chennai.
+ One cc to Mr. M. Sathyanarayanan, Advocate sR 54456
+ One cc to Mr. S. Jayasankar, Advocate SR 54598
BV (co)
sg 10/9/07

Judgment in
C.M.A.No.2027 of 2000
31-8-2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/